

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 29754

STATE OF IDAHO,)	2005 Opinion No. 6S
)	
Plaintiff-Respondent,)	Filed: April 6, 2005
)	
v.)	Stephen W. Kenyon, Clerk
)	
TAYA HOPE GRAZIAN aka MAXINE)	SUBSTITUTE OPINION
GRAZIAN,)	THE COURT'S PRIOR OPINION
)	DATED JANUARY 11, 2005
Defendant-Appellant.)	IS HEREBY WITHDRAWN
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Judgment of conviction for three counts of attempted procurement of prostitution and two counts of procurement of prostitution, affirmed in part and reversed in part.

Gordon Law Offices, Boise, for appellant. Philip H. Gordon argued.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent. Kenneth K. Jorgensen argued.

GUTIERREZ, Judge

Taya Hope Grazian appeals from her judgment of conviction for three counts of attempted procurement of prostitution and two counts of procurement of prostitution. We affirm in part and reverse in part.

I.

FACTUAL AND PROCEDURAL SUMMARY

Grazian made the hiring and firing decisions for Aanuu Ecstasy, a Boise-based business that provided “adult entertainment services.” Potential customers would call Aanuu and describe the physical attributes of a hypothetical woman¹ they would be willing to pay to entertain them.

¹ Aanuu did have one male entertainer on its roster.

Aanuu would then contact the on-call entertainer, or “sub-contractor,” that best matched the description provided by the potential customer. That entertainer would then phone the potential customer to negotiate the provision of entertainment services. A one-hour show cost \$140 and could include a striptease, or “masturbation show,” and an erotic massage. A portion of the show’s cost went to Aanuu as a referral fee. In addition to this “legal” show, at its conclusion, the entertainers could provide a “tip session,” for an additional charge to the customer. Aanuu did not receive a share of the proceeds from tip sessions.

The Canyon County Sheriff’s Office received an anonymous tip that Aanuu was engaged in promoting prostitution. Thereafter, Detective Talbot of that agency phoned Aanuu in an undercover capacity and requested the services of an entertainer. In turn, Aanuu contacted a “sub-contractor” named Holly, who arranged to meet Detective Talbot at a Canyon County motel. Holly subsequently was charged with prostitution. Next, three female officers went separately to Aanuu’s business office in Boise to pose as job applicants. The officers, each wearing a “wire” transmitter device, were separately interviewed by Grazian. The interviews were recorded and transcribed. During these interviews, Grazian described how Aanuu operated and the basic nature of the services offered. Grazian also discussed the tip sessions during these interviews.

A grand jury indicted Grazian on three counts of attempted procurement of prostitution, I.C. §§ 18-5602, 18-306(2). Approximately two weeks later, the grand jury indicted Grazian on three counts of procurement of prostitution relating to acts performed by Holly and another entertainer named Erin. The two indictments were consolidated by the district court. The consolidated cases proceeded to jury trial, after which Grazian was found guilty of all three attempted procurement of prostitution charges and two of the procurement of prostitution charges. Grazian appeals.

II.

ANALYSIS

A. Attempted Procurement of Prostitution

Grazian was charged with attempted procurement of prostitution under I.C. § 18-5602, which prohibits procurement of prostitution, and I.C. § 18-306, the general “attempt” statute that prohibits the attempt to commit any crime. Grazian first argues that her conviction for attempted procurement must be overturned because such a crime does not exist under Idaho law. In

support of this argument, Grazian relies on the fact that I.C. § 18-5602 no longer contains any reference to attempted procurement. Prior to 1994, I.C. § 18-5602 read in part as follows:

Procurement – Definition and Penalty. Anyone who shall place any person in the charge or custody of any other person for immoral purposes or in a house of prostitution or elsewhere with intent that he or she shall live a life of prostitution; or anyone who shall compel or shall induce, entice or procure, *or attempt to induce, entice, or procure or compel* any person to reside or with any other person for immoral purposes, or for the purposes of prostitution, or shall compel or *attempt to induce, entice, procure or compel any such person to reside in a house of prostitution,* or compel or *attempt to induce, entice, procure or compel him or her to live a life of prostitution,* shall be guilty of a felony, and, on conviction thereof, shall be punishable by imprisonment in the state prison for a period of not less than two (2) years nor more than twenty (20) years, or by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or by both such fine and imprisonment.

(Emphasis added). By a 1994 amendment, however, I.C. § 18-5602 was changed to read:

Procurement – Definition and Penalty. Any person who induces, compels, entices, or procures another person to engage in acts as a prostitute shall be guilty of a felony punishable by imprisonment for a period of not less than two (2) years nor more than twenty (20) years, or by a fine of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

Grazian contends that the purpose and effect of the 1994 amendment was the decriminalization of attempted procurement of prostitution.

The question presented is therefore one of statutory construction. This Court exercises free review over such questions. *State v. Schumacher*, 131 Idaho 484, 485, 959 P.2d 465, 466 (Ct. App. 1998). Where the language of a statute is plain and unambiguous, we give effect to the statute as written. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000). The language of the statute is to be given its plain, obvious, and rational meaning. *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). If the language is clear and unambiguous, there is no occasion for the Court to resort to legislative history or rules of statutory interpretation. *Escobar*, 134 Idaho at 389, 3 P.3d at 67. When this Court must engage in statutory construction, it has the duty to ascertain the legislative intent and give effect to that intent. *Rhode*, 133 Idaho at 462, 988 P.2d at 688. To ascertain the intent of the legislature, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute, and its legislative

history. *Id.* It is incumbent upon the Court to give a statute an interpretation which will not render it a nullity. *State v. Beard*, 135 Idaho 641, 646, 22 P.3d 116, 121 (Ct. App. 2001).

Grazian does not dispute that procurement of prostitution is a crime in Idaho, arguing only that the current statute does not address *attempted* procurement. However, Grazian was charged under I.C. § 18-5602 and I.C. § 18-306(2). Idaho Code § 18-306 renders attempts to commit crimes punishable under Idaho law, providing that “[e]very person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof” is subject to punishment for the attempted commission of that crime. This “general attempt statute” only applies where no other provision is made by law for the punishment of such attempts. *Id.* Grazian argues that this general attempt statute should not be used in combination with the procurement statute because to do so would render the legislative intent in promulgating the 1994 amendment a nullity.

However, review of the pertinent legislative history clearly indicates that the purpose of the 1994 amendment was not to decriminalize attempted procurement, as Grazian argues, but to delete obsolete language and increase the maximum fine. 1994 Idaho Session Laws, Ch. 130, p. 291. Thus, attempted procurement of prostitution remains a crime in Idaho.²

Grazian next argues that her conviction for attempted procurement is not supported by sufficient evidence. Appellate review of the sufficiency of the evidence is limited in scope. A judgment of conviction, entered upon a jury verdict, will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct. App. 1998); *State v. Knutson*, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct. App. 1991). We will not substitute our view for that of the jury as to the credibility of the witnesses, the weight to be given to the

² Grazian also argues that the fact that Idaho has a criminal solicitation statute, I.C. § 18-2001, supports her conclusion that Idaho no longer recognizes attempted procurement as a crime. However, the fact that the legislature enacted criminal offense statutes that have some overlap is not an indication that the legislature intended to decriminalize attempted procurement of prostitution. The Idaho Supreme Court has held that statutes which are *in pari materia* (statutes that relate to same subject) are to be construed together to further legislative intent. *State v. Barnes*, 133 Idaho 378, 382, 987 P.2d 290, 294 (1999). In this case, as in *Barnes*, the existence of overlapping statutes results in the grant of discretionary power to the prosecutor to decide which statute(s) will be charged.

testimony, and the reasonable inferences to be drawn from the evidence. *Knutson*, 121 Idaho at 104, 822 P.2d at 1001; *State v. Decker*, 108 Idaho 683, 684, 701 P.2d 303, 304 (Ct. App. 1985). Moreover, we will consider the evidence in the light most favorable to the prosecution. *Herrera-Brito*, 131 Idaho at 385, 957 P.2d at 1101; *Knutson*, 121 Idaho at 104, 822 P.2d at 1001.

Grazian was charged under I.C. § 18-5602, the procurement of prostitution statute, and I.C. § 18-306(2), Idaho's general attempt statute. Idaho Code § 18-306 provides that "[e]very person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof" is subject to punishment for the attempted commission of that crime. Under Idaho law, an attempt consists of two elements: an intent to do an act or bring about certain consequences which would in law amount to a crime, and an act in furtherance of that intent which goes beyond mere preparation. *State v. Glass*, 139 Idaho 815, 818, 87 P.3d 302, 305 (Ct. App. 2003), *citing State v. Otto*, 102 Idaho 250, 251, 629 P.2d 646, 647 (1981). The preparatory phase of a crime consists of "devising or arranging the means or measure necessary for the commission of the offense." *Id.*, *quoting* PERKINS, CRIMINAL LAW 557 (2d ed. 1969). To go beyond mere preparation, the actions of the defendant must "reach far enough toward the accomplishment of the desired result to amount to the commencement of the consummation of the crime." *Id.* This distinction can be articulated as the difference between preparation and perpetration. *Otto*, 102 Idaho at 252, 629 P.2d at 648. Assessment of whether certain conduct is merely preparatory or has reached perpetratory magnitude turns upon the facts and circumstances of each case. *Glass*, 139 Idaho at 819, 87 P.3d at 306. The issue before us can be resolved by analysis of the second element of attempt: whether Grazian's acts went beyond mere preparation to the commencement of the consummation of the crime.

The attempted procurement of prostitution charges against Grazian stemmed from her interviews with three undercover officers. Of the three meetings between Grazian and undercover officers, one was abruptly terminated when it was discovered that the officer's "wire" was malfunctioning. Review of the transcripts of the two remaining interviews reveals that Grazian addressed a wide variety of topics, many of them personal, interspersed with a description of the administrative procedures and business practices of Aanu. In the interviews, Grazian referred to illegal activities as being a standard part of the business. For example, Grazian indicated that massage licenses, while required by law, were not routinely acquired, and that she let customers give her back rubs. Grazian also said that Aanu sub-contractors should

not identify themselves as escorts, as required by law, when entering a hotel because such might cause potential customers embarrassment. Furthermore, although she repeatedly emphasized that the “tip sessions” were separate and distinct from the hourly sessions, Grazian described in sometimes graphic detail the manner in which some sub-contractors, herself included, engaged in acts of prostitution during those tip sessions. Grazian also indicated that sub-contractors could make a great deal of money, specifically mentioning that escorts could make up to \$15,000 a month, and well over \$5,000 a month if they were “good.” Furthermore, Grazian assured the undercover officers that local police were unconcerned with Aanuu’s business, implying that the chances of arrest were minimal.

However, all three officers testified that they were not offered jobs, not assigned a shift to work, not given any referrals, and were never contacted by Grazian in follow-up. The transcripts of the undercover recordings also indicate that Grazian told the officers that employment as an escort was, in effect, “not for everybody” and that tip sessions were voluntary and each entertainer set her own standards for the performance of such sessions. Although Grazian discussed the *option* of engaging in prostitution, she never asked the officers to do so. At most, one might reasonably infer that Grazian *encouraged* the officers to become legal escorts who could thereafter choose to perform illegal tip sessions. Encouragement to become an escort is not an act of perpetration for the purposes of attempted procurement of prostitution.

Our conclusion that Grazian’s acts were not acts in furtherance of a crime sufficient to establish perpetration is supported by previous Idaho Court decisions. The seminal case addressing this issue in Idaho is *Otto*, 102 Idaho 250, 629 P.2d 646. In *Otto*, the Idaho Supreme Court was confronted with the following fact pattern: Otto’s wife had disappeared, and he was being investigated by a Lewiston police officer. Otto told the owner of a local bar that he was interested in hiring a “hit man” to kill the officer. The bar owner reported this conversation to the police, and an undercover officer subsequently met with Otto to negotiate a contract for the hit. Otto agreed to pay the “hit man” \$1,000, \$250 of which was to be paid up front by placing it in the hit man’s pickup truck. Later that day, Otto was observed placing the advance payment in the truck. Otto was thereafter arrested for attempted first degree murder. The Court described the issue before it as whether Otto’s conduct amounted to more than solicitation of another to murder and reached the extent or degree of an attempt. Complicating matters was the fact that at

the time *Otto* was decided, Idaho did not have a criminal solicitation statute.³ The Idaho Supreme Court noted that “regardless how heinous, no man can be convicted for having criminal intent alone.” *Otto*, 102 Idaho at 251, 629 P.2d at 647. The Court went on to conclude that Otto had not taken “any steps of perpetration in dangerous proximity to the commission of the offense planned.” *Otto*, 102 Idaho at 255, 629 P.2d at 651. According to the Idaho Supreme Court, Otto had merely committed preparatory acts of incitement.

The next Idaho case to address I.C. § 18-306 and the line between preparation and perpetration was *State v. Gibson*, 106 Idaho 491, 681 P.2d 1 (Ct. App. 1984). A jury found Gibson guilty of attempting to procure perjured testimony. Gibson had purchased hay from a seller, paying him a price determined by weight. The seller suspected that Gibson had “shorted” him. Following a sheriff’s investigation, felony charges were filed. Before the preliminary hearing, Gibson telephoned the hay seller. With the seller’s consent, this conversation was recorded by law enforcement officers. Gibson asked the seller if he really considered himself “shorted,” and then offered the seller \$1,200 and said, “You’ll just have to say that you got to going back over your [weight] tickets and you decided you wasn’t short.” Gibson later reiterated that he would give the seller “whatever you want to get on the witness stand and say that I bought your hay and you’re not short,” and arranged to meet with the seller the next day in an attorney’s office. Relying on *Otto*, Gibson argued that his offer was merely preparatory. This Court disagreed, concluding that Gibson’s conduct went beyond mere preparation. Although the facts of *Gibson* are somewhat similar to those of the instant matter, particularly with respect to similarities between suborning perjury and procuring prostitution, both of which necessarily require some further act by a second party, there are significant differences. Notably, Gibson initiated the contact, offered a specific dollar amount, and explicitly instructed the seller to commit an illegal act in order to receive that money. In the instant matter, the interviews were

³ Such a statute now exists. Idaho Code section 18-2001 provides:

A person is guilty of criminal solicitation to commit a crime if with the purpose of promoting or facilitating its commission he solicits, importunes, commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish complicity in its commission or attempted commission.

initiated by undercover police officers, no offers or requests were made by Grazian and no follow-up ensued by either Grazian or the officers.

In *State v. Swader*, 137 Idaho 733, 52 P.3d 878 (Ct. App. 2002), this Court addressed the sufficiency of the evidence to prove the attempted manufacture of methamphetamine. As in *Gibson*, this Court rejected the contention that the state had failed to prove that certain acts went beyond those of mere preparation. In *Swader*, testimony indicated that the production of methamphetamine begins at the point lithium metal and anhydrous ammonia are added to pseudoephedrine. Evidence, including several hundred pills containing pseudoephedrine, materials containing lithium metal and anhydrous ammonia, and a one-gallon jar containing a white residue that Swader's boyfriend told a housemate was used to separate pseudoephedrine from binding materials, all indicated that Swader had begun this process.

Most recently, in *Glass*, 139 Idaho 815, 87 P.3d 302, this Court was confronted with the following fact pattern: As part of an online crimes investigation targeting internet chat rooms, an Ada County Sheriff's Office detective created a profile for a fictional fourteen-year-old girl, screen name "boredboisegirl14" (BBG14) and entered a chat room where "she" was approached by Glass, an adult using the screen name "s3x_slave_f0r_u." BBG14 explained that she was fourteen years old, and Glass thereafter described, in graphic detail, the sexual acts he would like to perform with her. Glass asked BBG14 if he could come to her house that day to be her "sex slave." BBG14 replied that her mother was home, but she would see whether they could use her friend's house at a later date. Glass contacted BBG14 twice more in the subsequent weeks inquiring about a meeting. BBG14 eventually told Glass she had secured an apartment for them to use the following day. Glass agreed to meet at that time and indicated that he would bring a box of condoms. BBG14 told Glass that she would place a picture of herself in a brown paper bag and leave it in a trash can in the parking lot of a local high school. Glass said he would retrieve it and would be driving a black Honda Civic. Before ending this conversation, the two agreed to meet at 10 a.m. the next day at the parking lot. A man in a black Honda Civic was later observed retrieving a paper bag, planted by police, from the parking lot trash can. The next day, at approximately 10:20 a.m., police detectives observed the same black Honda enter the parking lot, turn around, and then go back out. Immediately after the car left the lot, police initiated a stop. Glass, the driver of the car, was arrested. Police found a box of condoms in the vehicle, and Glass later admitted he logged into the chat room under the screen name

s3x_slave_f0r_u. On appeal, Glass argued that there was insufficient evidence to show that he had attempted to commit lewd and lascivious conduct. After noting, in reliance on *Otto*, that the actions of the defendant must reach far enough toward the accomplishment of the desired result to amount to the commencement of the consummation of the crime in order to be perpetratory rather than merely preparatory, this Court ruled that Glass had taken substantial steps in furtherance of the crime of lewd conduct with a minor. In particular, Glass, who initiated the internet chats, had arranged to meet with BBG14 at a specific place and at a specific time. This Court ruled that such conduct was more than mere preparation, and unequivocally confirmed a criminal design. *Glass*, 139 Idaho at 820, 87 P.3d at 307. The instant matter is distinguishable from *Glass* in that Grazian did not initiate the contact, made no specific plans, or articulated any specific offers or requests relating to prostitution.

In light of the standards articulated in Idaho cases from *Otto* to *Glass*, we conclude that the state did not prove that Grazian took substantial steps in furtherance of the crime of attempted procurement of prostitution. Thus, the evidence adduced at trial is insufficient to support the guilty verdict on the three counts of attempted procurement of prostitution.

B. Procurement of Prostitution

Grazian also appeals her conviction for procurement of prostitution, contending that defects in the grand jury proceedings and erroneous evidentiary rulings at trial deprived her of a fair trial.

As to the evidentiary rulings, Grazian asserts that the district court committed error by excluding the testimony of certain witnesses who intended to offer testimony Grazian contends was exculpatory. Grazian sought to introduce testimony from (1) an attorney who had assisted her in establishing Aanuu Ecstasy and was expected to testify that Grazian had told him that she wanted to be able to easily fire sub-contractors who engaged in illegal activity; (2) a frequent customer of Aanuu who had previously testified before the grand jury that he had never obtained unlawful sexual services from any of Aanuu's sub-contractors, but had instead received only lawful massages; and (3) various other witnesses who were expected to testify that they had overheard Grazian's side of Aanuu-related telephone calls where Grazian informed callers that Aanuu did not offer sexual services.

The district court ruled that the proffered evidence was impermissible hearsay and also impermissible character evidence. Grazian argues that the district court erred in ruling that this

evidence was inadmissible hearsay, but fails to challenge the ruling that the proposed testimony would constitute impermissible character evidence. Where a lower court makes a ruling based on two alternative grounds and only one of the grounds is challenged on appeal, the appellate court must affirm on the uncontested basis. *State v. Goodwin*, 131 Idaho 364, 366, 956 P.2d 1311, 1313 (Ct. App. 1998). Because Grazian does not assert error in the district court's decision that the proffered evidence was impermissible character evidence, we affirm these rulings.

Grazian also asserts that she desired to take the stand and testify in her own behalf, but only as to the procurement counts. Because Grazian feared that the district court would allow her to be cross-examined as to all the counts, she filed a motion *in limine* requesting the district court to limit the scope of cross-examination to the procurement charges only. This motion was denied, as the district court determined that the conversations Grazian had with the undercover officers were relevant and could be used for impeachment purposes even if Grazian testified only as to the procurement counts. Grazian argues that this ruling seems to carve out a new rule permitting "open-ended carte blanche" questioning of a testifying criminal defendant. We disagree with this proposition because Idaho Rule of Evidence 611(b) provides that although cross-examination should be limited to the subject matter of direct examination and the credibility of the witness, the district court has discretion to grant cross-examination into additional matters. We conclude it was not an abuse of discretion for the district court to rule that Grazian's statements to the undercover officers were potentially relevant to challenge Grazian's credibility on the subject matter of the proposed direct examination. Accordingly, we affirm the district court's denial of Grazian's motion *in limine*.

As to the grand jury proceedings, Grazian asserts that the prosecutor failed to provide any iteration of the key elements of the offenses charged and also failed to advise the grand jury as to the existence of known exculpatory evidence. However, alleged errors in a grand jury proceeding will not be examined on appeal where the defendant has been found guilty following a fair trial. *State v. Smith*, 135 Idaho 712, 717, 23 P.3d 786, 791 (Ct. App. 2001). Grazian has not shown that she received an unfair trial on the procurement charges. Accordingly, we do not review the claimed errors at the grand jury proceeding.

C. Joinder

Grazian argues that the attempted procurement charges should not have been consolidated with the procurement charges. The state argues that Grazian has failed to present this issue for appellate review because she did not support her argument on this point with citation to authority. *See State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). However, because Grazian presents argument on this point, and because that argument refers back to her substantive arguments regarding the sufficiency of the evidence, we reach this issue.

Joinder of offenses is governed by Rule 8(a) of the Idaho Criminal Rules. Offenses may be joined when they are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan. I.C.R. 8(a). In the instant matter, the alleged attempted procurement of prostitution and procurement of prostitution were parts of a common scheme or plan. Therefore, the joinder was permissible.

D. Sentence

Grazian argues that the sentences imposed constitute cruel and unusual punishment prohibited by the United States Constitution and the Idaho Constitution. When reviewing whether a sentence imposed under the Uniform Sentencing Act constitutes cruel and unusual punishment, this Court treats the minimum period of incarceration as the duration of confinement. *State v. Matteson*, 123 Idaho 622, 626, 851 P.2d 336, 340 (1993); *State v. Daniel*, 127 Idaho 801, 804, 907 P.2d 119, 122 (Ct. App. 1995). Therefore, the Court will analyze only whether the determinate portion of the sentence violates the state and federal constitutions.

To address this constitutional challenge, we must first make a threshold comparison of the crime committed and the sentence imposed to determine whether the sentence leads to an inference of gross disproportionality. *Matteson*, 123 Idaho at 626, 851 P.2d at 340; *State v. Brown*, 121 Idaho 385, 394, 825 P.2d 482, 491 (1992); *State v. Olivera*, 131 Idaho 628, 632, 962 P.2d 399, 403 (Ct. App. 1998). This gross disproportionality test is equivalent to the standard under the Idaho Constitution which focuses upon whether the punishment is out of proportion to the gravity of the offense committed and such as to shock the conscience of reasonable people. *Brown*, 121 Idaho at 394, 825 P.2d at 491. If an inference of such disproportionality is found, we must conduct a proportionality analysis comparing the sentence to those imposed on other defendants for similar offenses. *Matteson*, 123 Idaho at 626, 851 P.2d at 340; *Olivera*, 131 Idaho at 632, 962 P.2d at 403. The burden of demonstrating that a sentence is cruel and unusual is on

the person asserting the constitutional violation. *State v. Clay*, 124 Idaho 329, 332, 859 P.2d 365, 368 (Ct. App. 1993).

Grazian was sentenced to a determinate term of two years, with eight years indeterminate, on each conviction for procurement of prostitution, to run concurrently. Because the determinate portion of her sentences is not grossly disproportionate to the crimes Grazian committed, we reject her argument on this point.

III. CONCLUSION

We conclude that Grazian's conviction for the attempted procurement of prostitution is unsupported by the evidence and so reverse. However, her conviction for the procurement of prostitution, relating to the activities of two former Aanuu sub-contractors, is affirmed, as are her sentences.

Judge LANSING and Judge Pro Tem BEVAN **CONCUR.**